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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,452	07/26/2006	Frank Lehnhaeuser	740116-652	1326

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ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C.
Intellectual Property Department
P.O. Box 10064
MCLEAN, VA 22102-8064

EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3769

NOTIFICATION DATE	DELIVERY MODE
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02/10/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/597,452	LEHNHAEUSER, FRANK	
	Examiner	Art Unit	
	Ahmed M. Farah	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-65 is/are pending in the application.
- 4a) Of the above claim(s) 44,45 and 55-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-43,46-51 and 59-64 is/are rejected.
- 7) ☒ Claim(s) 49,52-54 and 65 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/26/2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the species in Fig. 5 the reply filed on November 23, 2010 is acknowledged.

Specification

The disclosure is objected to because of the following informalities: the term "flap 19" in paragraph 0037 of the written description is believed to be a typographical error. As shown in Fig. 8b, the numerical representation "19" is designated for the flow-routing guide means.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 37, and dependent claims 38-43, 46-54 and 58-65 thereof, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 recites the limitation "each lengthwise side of the horizontal surface" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3769

Claim 58 recites the limitation "said at least one flow-routing member" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 37, and dependent claims 38-43, 46-54 and 58-65 thereof, are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the geometry of the horizontal surface to clearly define its relationship with the supply side/means, the foot side, and the head area.

Appropriate correction such as –a horizontal surface for supporting an infant lying thereof, the horizontal surface having a two lengthwise sides, a foot side, and head area-- is suggested.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 37, 39-43, 48, and 59-64 are rejected under 35 U.S.C. 102(b) as being anticipated by Koch et al., DE 103 20 195.5.

Koch et al. disclose a thermal therapy device/incubator for an infant, the device comprising:

A horizontal surface/bed 1 having at least two lengthwise sides, a foot side, and head side (see Fig. 6);

a three-sided supply means 2, 3, for upwardly directing a supply of warm and humid/moist air (see Fig. 1), said supply means having a supply side bordering each lengthwise side and the foot side of the horizontal surface/bed 1; and

an exhaust means 4 located at least above the head area of the bed 1 for exhausting the supplied humid air as claimed (see Figs. 1-4).

With respect to claims 39-41, the exhaust means 4 of Koch et al. transversely overhangs the bed 1 in a lengthwise direction as claimed (see Fig. 1-4).

With respect to claim 42, the exhaust means 4 is connected to a front wall/vertical wall 29, which is provided on the head side (see Fig. 3).

With respect to claims 43 and 48, the front wall 29 substantially extends over the length of the head side at a small length, wherein each of the supply sides extends the full length of the bed and the foot side as claimed (see Figs. 1-4 and 6).

With respect to claims 59 and 60, the incubator apparatus of Koch et al. further comprises a means 6, 7, integrated substructure of the thermal therapy device/incubator for adjusting/conditioning the temperature and humidity of the air ejecting from the three-sided supply as claimed (see Fig.1).

With respect to claim 61, Koch et al. further teach that the temperature of the air is adjusted to between 28⁰C to about 39⁰C and a humidity of about 85% (see Claim 4).

With respect to claim 62, the apparatus comprises at least one connection for supplying gas to the incubator (see Fig. 1).

With respect to claims 63 and 64, the exhaust system of the incubator device of Koch et al. comprises a swirl hood, the exhaust system attached to a front wall 29 provided on the head side of the horizontal surface/bed 1 (see Figs. 2-4).

Claims 37-43, 46-48, 50, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldberg et al. US Patent No. 6,296,606.

Goldberg et al. disclose a thermal therapy device/incubator for an infant, the incubator comprising:

a horizontal surface/bed 46 having at least two lengthwise sides, a foot side, and head side (see Fig. 1);

at least four-sided supply means 26, 28, 30, 32 for upwardly directing a supply of warm and humid/moist air (see Fig. 2), said supply means having a supply side bordering each lengthwise side and the foot side of the horizontal surface/bed 46; and

an exhaust means comprising a hood/canopy 24, support arm 22, and exhaust openings 44, the exhaust means located at least above the head area of the bed 46 for exhausting the supplied humid air as claimed (see Figs. 1-6).

With respect to claim 38, the exhaust means overhangs the patient support surface/bed by an amount that is less than the full length of the support surface as claimed (see Fig. 2).

With respect to claims 39-41, the exhaust means of Goldberg et al. transversely overhangs the bed 46 in a lengthwise direction as claimed (see Figs. 1 and 3-7).

With respect to claim 42, the exhaust means is connected to a front wall/support member 22, which is provided on the head side (see Fig. 5).

Art Unit: 3769

With respect to claims 43, 48, and 50, the support member 22 is adjustable and substantially extends over the length of the head side at a small length, wherein each of the supply sides extends the full length of the bed and the foot side as claimed (see Figs. 1-7).

With respect to claims 46, 47, and 51, Goldberg et al. teach that the outflow supply sides 26, 28, 30, and 32 are angled relative to the patient support surface, wherein the angle 48 between the supply lines and the support surface is between 45° to as high as 90° (see col. 7, lines 29-59).

Allowable Subject Matter

Claims 49, 52-54 and 65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 58 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

Art Unit: 3769

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johnson Henry can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/
Primary Examiner, Art Unit 3769

January 28, 2011.